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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,409	09/17/2001	Jean-Louis Gueret	204296USOPCT	6084
22850 7590 01/13/2009 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER DOAN, ROBYN KIEU				
ART UNIT 3732		PAPER NUMBER		
NOTIFICATION DATE 01/13/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/787,409

Applicant(s)

GUERET, JEAN-LOUIS

Examiner

Robyn Doan

Art Unit

3732

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24, 25, 28, 32, 34, 36-60 and 70-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45, 46, 52-60 and 80-85 is/are allowed.
- 6) ☒ Claim(s) 24, 25, 28, 32, 34, 36-44 and 47-51 is/are rejected.
- 7) ☐ Claim(s) 70-74 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notes of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

The indicated allowability of claims 24, 25, 28, 32, 34, 36-44, 47-51, 75-79 are withdrawn in view of the newly discovered reference(s) to Friedman. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24, 25, 28, 32, 34, 36-41, 47-51, 75-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koppel (USP 5,318,051) in view of Friedman (USP 2,175,344).

Koppel discloses a comb is capable of applying a product to at least one eyelashes and eyebrows (fig. 1) comprising an arrangement of teeth (12), wherein the arrangement of teeth being obtained by at least two parts which is formed of a single piece of material, the two parts are joined together pivotably by a film hinge (see fig. 1), each of the parts having teeth extending thereto and an inner edge of each of the teeth of the first part lies in a same plane as an inner edge of each of the teeth of the second part (see fig. 1), the comb further having an element for grasping (48, fig. 9). Koppel fails to show the first part having teeth inclined in a first direction and the second part having teeth inclined in a second direction, the teeth of first part being offset in a staggered configuration relative to the teeth of the second part. Friedman discloses a

comb having a plurality of teeth (9), wherein each alternate tooth being inclined a direction opposite to the direction of the other tooth (see fig. 3), and when viewed perpendicularly to the axis, two consecutive teeth form a notch between them. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular teeth shape as taught by Friedman into the comb of Koppel for the intended use purpose. And it would also have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the two parts with molded thermoplastic material with graphite, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. In regard to claims 41, 42, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the two parts with different material and at least one portion of at least one part being covered with flocking, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koppel in view of Friedman as applied to claim 36 above, and further in view of French Patent '805 (IDS cited reference).

Koppel in view of Friedman disclose the essential claimed invention except for the grasping element located away from the film hinge. FR '805 discloses a cosmetic

comb (fig. 1) comprising a first part (1) with a first elongate base (5) along the length of which is connected a first succession of teeth (3), a second part (2) with a second elongated base (9) along the length of which is connected a second succession of teeth (4), wherein the parts are connected to each other by hinge means (14, 17, 15, 16); the comb further having a grasping element (7) located away from the hinge means. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the grasping element as taught by French Patent '805 into the comb of Koppel in view of Friedman as an alternative grasping element.

Claims 43, 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koppel in view of Friedman as applied to claim 25 above, and further in view of McKay (USP 5,325,878).

Koppel in view of Friedman disclose the essential claimed invention except for an open-cell material inserted between the two parts. McKay discloses a comb (fig. 4) including an arrangement of teeth (30) capable of applying a product, wherein the arrangement of teeth being obtained by at least two separate parts (28, 30) along an axis, a layer of absorbent material (14) being inserted between two parts, the absorbent material being made of open cell foam (sponge, col. 3, lines 27-30). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the absorbent material as taught by McKay into the comb of Koppel in view of Friedman in order to better retain the product within the comb.

Claims 45, 46, 52-60, 80-85 are allowable over prior art of record.

Claims 70-74 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner, Art Unit 3732

